Supreme Court of the United States

October Term, 1944.

No. _____

WILLIAM B. BELKNAP, - - - *Petitioner,*

v.

ANN MANNING DERIDDER MCANDREWS,
MARTIN MCANDREWS,
UNKNOWN HEIRS OF STANISLAUS P. M. C. DERIDDER, DECEASED, AS UNKNOWN DEFENDANTS, - - - - - *Respondents.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 170-177) was handed down on February 25, 1944, and is reported in 141 Fed. 2d 111.

II.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the Sixth Circuit, a review of which

is here sought, was entered February 25, 1944 (R. 169), and Petitions for Rehearing were denied on April 3, 1944 (R. 207).

The statutory provision which is relied upon to sustain the jurisdiction of this Court is Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347).

III.

STATEMENT OF THE CASE.

The statement appearing at pages 1 to 6 in the Petition for Writ of Certiorari is hereby adopted and made a part of this brief.

IV.

SPECIFICATION OF ERRORS.

Petitioner intends to urge and rely upon each of the following errors assigned to the judgment of the United States Circuit Court of Appeals for the Sixth Circuit:

A. The Court erred in failing to hold that Tracts 2 and 3 were offered separately at the sale held on August 14, 1931, and in holding that such sale was invalid because of the failure to offer such tracts separately. The Court further erred in holding that the deed to the United States was invalid because of such failure to offer said tracts separately.

B. The Court erred in failing to hold that Stanislaus P. M. C. DeRidder and his alleged heirs are estopped from denying that petitioner has good title and in holding that they are not estopped.

C. The Court erred in failing to quiet title in petitioner because of the laches of DeRidder and his alleged heirs.

V.

ARGUMENT.

A. The Court erred in holding that the sale on August 14, 1931, was invalid.

In the first place, Tracts 2 and 3 were offered separately within the meaning of *Section 3701 (d) of Title 26 of U. S. C. A.* Said section, in providing for the manner of sale of real estate seized in distraint proceedings, provided as follows:

> "(d) Manner of sale. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses and charges aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price."

Section 3704 (c) (2) of Title 26 of U. S. C. A. reads as follows:

> "If the proceedings of the officer as set forth have been *substantially* in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto." (Italics ours.)

The evidence in this case unmistakably shows that Tracts 2 and 3 were offered separately to satisfy the *substantial* requirements of the statute. In addition to Record 21 (R. 155) and the deed from the Collector of Internal Revenue to the United States (R. 159), we have the undisputed testimony of Mr. Avery Wyatt, who was present at the sale, that the Government agents conducting the sale read the notice of same and stated that they were selling the property described in such notice (R. 99). It will be noted from paragraph 4 of the Stipulation (R. 30) and from the way the property description is set out in Record 21 (R. 156) that Tract 2 was first described by metes and bounds, and then Tract 3 was described by metes and bounds, but the description of Tract 3 is preceded by "(2)," which shows that each of the two tracts was being offered for sale. The notice itself, which was read at the time of the public sale, stated that the "following described real property * * * will be sold * * * at public auction" at a certain time and place. Following this statement the metes and bounds descriptions of Tracts

2 and 3 appeared. The reading of this notice constituted an offer of each of the tracts for sale.

The only authority we have been able to find on this point holds as just stated. In the case of *Sherman v. Greeley Building & Loan Association*, 66 Col. 288, 181 Pac. 975, the statute and notice said that the county treasurer would "offer for sale at public sale * * * on the 9th day of December, A. D. 1911, * * * so much of the following described real estate * * * as shall be necessary to pay the tax hereinbelow set down, interest and penalties, to-wit." The notice set out a description of three town lots. The Court, at page 976 of the Pacific Reporter, stated:

> "The mailing, publishing, and posting of the notice of tax sale, which is presumed to have been regularly done, and the reading of the notice by the treasurer at the sale, was equivalent to an offer to receive any proper bid, including one upon less than the whole amount of any tract of land or lot, or parcel, subject to tax sale, and it was *not necessary* for the county treasurer, in order to conduct the sale legally, *expressly to inquire* if any one person desired to, or would, take or bid upon a less amount of any parcel than the whole thereof.
>
> "At the tax sale in question *only one* bid was received or made; the same being for the whole of the three town lots in controversy which had been assessed and were offered for sale as one parcel. No one offered to take less than the whole of the property. Under these circumstances, the statutes relating to tax sales not only warranted, but also required, that the county treasurer sell the real estate in question to the bidder above

named, or to the person offering to take the whole of the tract when no one offered to take a lesser quantity." (Italics ours.)

So far as the opinion shows, there was no statute in the State requiring only substantial compliance, and yet the Court held that the statute had been complied with by simply reading the notice of sale.

In the second place the sale of August 14, 1931, was not invalid, even if it be assumed, for the sake of argument, that Tracts 2 and 3 were not offered separately. This alternative proposition is supported by three distinct grounds, each sufficient by itself.

The first ground is that it was not necessary to offer Tracts 2 and 3 separately at such sale, because they were not "several distinct tracts or parcels," within the meaning of *Section 3701 (d) of Title 26, U. S. C. A.* There were no *distinct* tracts. Mr. Belknap testified, without contradiction, that there was no fence separating the whole 160 acres composing both tracts (R. 67). At the same point he testified that both *tenant houses* were on one of the tracts. This Court, in the case of *Springer* v. *United States,* 102 U. S. 586, 26 L. Ed. 253, 256, emphasized that it was important to consider the location of the houses and barns in determining whether or not certain property should be sold in two or more parcels. In the Statement of Facts herein we gave numerous references to the Record to show that after 1909 every one considered Tracts 2 and 3 as *one* farm, and this was made a finding of fact at page 37 of the Record. The only thing stipulated at page 113 of the Record was that, *until 1909,* there were

distinct tracts. This was not true at the time the sale was held in 1931. Even if it should be considered that there were "distinct" tracts, still the property sold did not consist of "several" tracts, because there were only two. We cited cases to support this proposition in our Petition for Rehearing (R. 199).

Since the real estate seized did not consist of "several distinct tracts," it automatically follows that the sale of all of the estate as a whole would be entirely proper, and it is unnecessary to consider the matter any further.

A second ground sufficient alone to support the alternative argument referred to above is that *Section 3712 of Title 26 of U. S. C. A. required* all of the property to be sold as a whole, even if it be assumed that Tracts 2 and 3 were several distinct tracts. Said section reads in part as follows:

> "When any property liable to distraint for taxes is *not divisible, so as to enable the Collector by sale of a part thereof to raise the whole amount of the tax, with all costs and charges,* the whole of such property shall be sold. * * *" (Italics ours.)

This section was adopted at the same time as the section providing for the offer of each tract or parcel for sale separately in certain instances, with the result that said Section 3712 modifies such other section to prevent it being applicable under all sets of circumstances. In other words, Section 3701 (d) is applicable only if Section 3712 is inapplicable.

Said Section 3712, in effect, provides that, if the Collector by a sale of Tract 2 or 3 would not have been able to raise $1,994.28, the amount of the tax, interest, expenses and charges in the case at bar, such property, for the purposes of Section 3712, was "not divisible," and the Collector was justified in selling both tracts together. A case clearer than the case at bar could not be imagined where the Collector by a sale of a part of the property could not raise the whole amount of taxes with costs and charges. The undisputed facts (R. 99) are that no persons were present at such sale other than Avery Wyatt and his wife. Wyatt was the farm manager of the taxpayer, DeRidder. It was held by both the District Court and the Circuit Court of Appeals that the sale was properly advertised and that every one who had a right to do so had an opportunity to be present. With the undisputed testimony in the Record that neither Wyatt nor his wife desired to make any bid at any price on either Tract 2, Tract 3, such tracts together or any part thereof (R. 99), it becomes absolutely clear that it was the mandatory duty of the officers of the United States, under Section 3712, to sell such property as a whole. It was so held by the District Court (R. 41). When no bid was made for the whole of said estate, it became their duty, under *Section 3701 (e) of Title 26, U. S. C. A.*, to declare same purchased for the United States, which was done.

Section 3702 (b) (1) does not militate against the foregoing. Said section provided as follows:

> "The owners of any real estate sold as aforesaid, their heirs, executors or administrators, or

any persons having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof."

Said section would not come into operation at all as to any particular tract when Section 3712 was applicable, in effect modifying Section 3702 (b) (1), as is the situation in the case at bar.

A third ground sufficient alone to support the alternative argument referred to above is that, even if it be assumed that the statutes in question provided that Tracts 2 and 3 should be offered separately, still such sale in 1931 was at the worst only *erroneous* or *voidable.* It was *not void* and can not be set aside after the property has been sold to a bona-fide purchaser for value, who has made valuable and substantial improvements upon such property during the long delay before respondents questioned his title.

Some authorities go so far as to hold such a sale entirely good and not even voidable. In the case of *Wilson* v. *Cantrill,* 40 S. C. 114, 18 S. E. 517, the statute authorized the sheriff to sell only so much land as necessary to pay taxes thereon. The Court stated that the fact that the sheriff sold an entire tract without making any effort to subdivide it will not invalidate the sale, in the absence of fraud or collusion. In that case it was stated that the evidence showed the 150 acres of land involved was worth eight to ten dollars an acre, but the entire tract was bid in by a purchaser at a tax sale for $26.42. It was held that such purchaser obtained good title.

In the case of *Nichols* v. *Older,* 78 N. J. Eq. 101, 78 Atl. 689, there were four or five lots assessed separately for taxes, but were sold as a whole. The Court, at page 169 of the Atlantic Reporter, stated:

> "It does not appear that exactly the same result would not have ensued to her [the owner of the property] if these lots had been knocked down separately to purchasers, instead of all being knocked down to one purchaser in one lump sale."

In just the same manner Mr. DeRidder was not prejudiced in any way by any failure to offer Tracts 2 and 3 separately, because it would have made absolutely no difference in the result if they had been so offered.

The opinion of the Circuit Court of Appeals (R. 175) states that when it does not affirmatively appear in a sale of the entire land that no one would bid the amount of the taxes and costs for less than the whole, or that the land was incapable of division, the sale is invalid. The case of *Slater* v. *Maxwell,* 73 U. S. 268, 18 L. Ed. 796, as well as two other cases, are cited for this proposition. However, on the basis of same, the sale in the case at bar is not invalid. Even if we assume that it does not affirmatively appear that the land in question was incapable of division, still it does "affirmatively appear" that no one would bid the amount of the taxes and costs for less than the whole. This is shown by the evidence, already referred to, of Mr. Wyatt (R. 99).

Although the Court, in the case of *Keeley* v. *Sanders,* 99 U. S. 441, 25 L. Ed. 327, had a different statute

before it, it there gave a dictum which solves our present problem. It was stated at page 328 of 25 L. Ed.:

> "The fourth and fifth objections to the validity of the sale are, that while the taxes due bore but a small proportion to the value of the property, the commissioners sold it as an entirety without subdivision. If this was so, it was a *mere irregularity*, and by no possibility could it affect the validity of the sale." (Italics ours.)

In this case the Supreme Court stated that it was not the duty of those selling the property for taxes under the law governing the case to subdivide the property, but even if there had been a statutory provision similar to Section 3701 (d) of said Title 26, it would have been a "mere irregularity" for the property to be sold as a whole.

The Circuit Court of Appeals held that DeRidder was deprived of his statutory right to redeem one or the other of the tracts by paying the part of the charges allocated thereto, because of the absence of an apportionment by the Collector (R. 176). However, under Section 3701 (d), apart from the question of expenses and charges, there was no duty to offer either tract for less than $1,983.58, which was the total amount of tax, plus interest (R. 158), since the section simply provides that each tract or parcel shall be offered for sale separately, which means that such tract or parcel could be offered for the full amount of the tax and interest. Furthermore, the section by its very wording provides that not only could the expenses and charges, amounting to $10.70 in this instance (R. 158), be apportioned

to the several tracts or parcels, but they could all be allocated to a particular tract, under the clause "or to any of them" contained in such section with the result that neither tract would have to be offered for less than $1,994.28. Even if this clause was not included, it is clear that half of the $10.70 expense could be allocated to one tract and the other half to the other, with the result that, if Mr. DeRidder desired to redeem a tract, he would have to pay $1,988.93, which is the total of $1,983.58 for tax and interest, plus $5.35, which is one-half of the charges and expenses. The amount of $5.35, which Mr. DeRidder would have to pay because of the failure to allocate the charges and expenses, is so small as to be disregarded under the principle of *de minimis*. See *Kelly* v. *Adams Express Co.*, 134 Ky. 208, 119 S. W. 747, and *Morehead Hotel & Apartment Co.* v. *Lampkin*, 267 Ky. 147, 107 S. W. 2d 670.

In the light of the foregoing, the case of *Supervisors* v. *U. S., ex rel.*, 71 U. S. 435, 18 L. Ed. 419 (R. 174), relied on by the Circuit Court of Appeals, is immaterial. Of course that case is not in point because it involved the question of whether or not words permissive in form would be construed to be mandatory so as to require the Supervisors of a township to levy a special tax, which would be the only means of paying certain bonds which it had issued. However, even if the wording of *Section 3701 (d) of Title 26 of U. S. C. A.* is construed to be mandatory to require the apportionment of expenses and charges, we have already shown that there is other wording, namely, "or to any of them" which would permit all of such expenses and

charges to be apportioned to one tract, and even if the $10.70 of expenses and charges involved in the case at bar were apportioned, one-half to each tract would amount to only $5.35, which should be disregarded on the principle of *de minimis* when considering the question of whether or not Mr. DeRidder was prejudiced by not being able to redeem one tract at a price of $5.35 less than he would have to pay without such apportionment.

In any event, the sale on August 14, 1931, should not be held to be worse than *irregular* or *voidable*. If it is so considered Mr. DeRidder would have had the right under *Section 3702 (b) of Title 26, U. S. C. A.*, to have had the sale set aside within one year after August 14, 1931, regardless of whether or not any apportionment of expenses and charges was made or required to be made. However, when he did nothing during such year and the property was conveyed to the United States Government, which re-sold it in September, 1933, to a bona-fide purchaser for value, Mr. Belknap, any right which Mr. DeRidder had to avoid such sale should be held to be barred. If Mr. DeRidder had attempted to avoid the sale within the period of one year his action would have amounted to a direct attack upon its validity. However, when his alleged successors in interest attempt to avoid it years after the property has been sold to a bona-fide purchaser it amounts to a collateral attack, which should not be permitted.

In the case of *Flynn* v. *Edwards,* 36 Fed. 873, certain land was sold for property taxes. The purchaser

at the tax sale conveyed the property to bona-fide purchasers for value, who went into possession. The former owner who had owed the taxes, for which the property was sold, then attempted to recover possession of the property. The plaintiff made the contention that the Sheriff in conducting the sale was required to sell the least possible quantity to satisfy the judgment and not to sell the whole 40-acre tract without first offering a lesser amount. The Court held for the possessor of the land on the ground that the sale could not be invalidated in a collateral proceeding. This was particularly true where the possessor had placed valuable improvements on the property, as is the situation in the case at bar. Also see *South Missouri Pine Lumber Company* v. *Carroll,* 255 Mo. 357, 164 S. W. 599; *Knollenberg* v. *State Bank of Alamogardo,* 35 N. M. 427, 299 P. 1077, cert. den., 284 U. S. 661, 52 S. Ct. 37, 76 L. Ed. 560; *Richardson* v. *Lloyd,* 90 Mont. 127, 300 P. 254; *City of Bayonne* v. *Morris & Cummings Dredging Co.,* 113 N. J. Eq. 116, 166 A. 174.

The general rule is that language in statutes pertaining to execution sales requiring real estate to be divided when sold, even though mandatory in form, will be construed to be merely directory.

> *Rector* v. *Hartt,* 8 Mo. 448, 41 Am. Dec. 650; *Groff* v. *Jones,* 6 Wendell, 522, 22 Am. Dec. 545; *Brown* v. *O'Donnell,* 123 Mich. 100, 81 N. W. 961.

The case of *Rector* v. *Hartt, supra,* emphasized that there was a sound public policy in upholding such sales because otherwise bidding would be discouraged to

the point where the confidence of the public would be destroyed in such auctions. In the case of *Groff* v. *Jones, supra,* the Court stated at page 545 of 22 American Decisions:

> "The legislature have enacted that no more of any real estate shall be exposed for sale than shall appear necessary to satisfy an execution issued upon a judgment: 2 R. S. 369, sec. 39. This provision can be construed only as directory to the Sheriff and the sale to a *bona fide* purchaser must be holden to be valid, although the requirements of the statutes are not complied with."

Therefore, it is submitted that even if it should be considered that there were several distinct tracts which were not offered separately but which the statute required to be so offered, such an irregularity would not make the 1931 sale *void,* but only *voidable,* with the result that it cannot be collaterally attacked after the one-year period for redemption has expired. However, we have cited authority which has even gone so far as to hold that in such an instance the sale is *not even voidable.* Actually, we believe that this point should be rested on the basis of Sec. 3712 of Title 26, U. S. C. A., and it should be held on the basis of this particular record, showing that not one penny could have been raised by offering the tracts separately, that the *whole of such property* was required to be sold *without offering it separately.* Or this issue could be rested on the basis that there were not "several distinct tracts" so that there was no necessity of offering any part of the property less than the whole. We have

cited a Colorado case, at page 15 herein to the effect that the reading of the advertisement at the sale amounted to a separate offer of such tracts if it be considered that there were "several distinct tracts." Thus, it is seen that there is not only one but several bases upon which it should be held that the 1931 sale cannot be used to invalidate to any extent the title of the petitioner.

B. The Circuit Court of Appeals erred in holding that the respondents are not estopped to deny that petitioner has good title.

In *Pomeroy's Equity Jurisprudence,* 5th Edition, Vol. 3, Sec. 804, page 189, the following definition of equitable estoppel is given:

> "An equitable estoppel is the effect of the voluntary conduct of a party whereby he is absosolutely precluded both at *common law* and in equity, from asserting rights which perhaps have otherwise existed, either of property, or contract, or of remedy, as against another person who has in good faith relied upon such conduct and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, or contract, or of remedy." (Italics ours.)

This definition was approved in the cases of *Haggard* v. *Green,* 224 Ky. 441, 6 S. W. 2d 487; *Jett* v. *Jett,* 171 Ky. 548, 188 S. W. 669, and *Fitzpatrick* v. *Baker,* 155 Ky. 175, 159 S. W. 675. The doctrine is applicable, it is to be noted, at *law* as well as in equity.

In the light of the foregoing definition let us summarize the important facts in the case at bar. From the evidence it is clear that Mr. DeRidder knew prior to September 21, 1933, the date of the sale to Mr. Belknap, of his claim that the first sale on August 14, 1931, was illegal because of not being held on Tract 2 or Tract 3. Record, 21, the recitals in said deed to the United States already referred to, and the letter of Commissioner Helvering dated March 6, 1936, in reply to the letter of February 17, 1936, of Messrs. Miller and Chevalier, all show that Mr. DeRidder received prior to the first sale, the notice which is contained in the Stipulation (R. 155, 159, 144). As shown by page 132 of the Record, the petition of Mr. Robert Crowe, attorney for Mr. DeRidder, was filed on or about September 26, 1933. It states that Mr. DeRidder did not learn of the mistake as to the first sale until long afterwards. The only reasonable interpretation of this is, however, that he did learn of such alleged mistake prior to the second sale on September 21, 1933, and, of course, from a date not later than the time of Mr. Wyatt's trip to New York soon after August 14, 1931. Mr. DeRidder knew also all of the facts about whether Tracts 2 and 3 were offered separately or only together in order to determine whether or not the first sale was valid or invalid (R. 100, 101). Both Mr. DeRidder and Mrs. McAndrews, one of the respondents herein, were informed by Mr. Wyatt prior to September 21, 1933, of the fact that a sale of Tract 2 and Tract 3 was going to be held on that day (R. 101, 102).

Mr. DeRidder engaged the legal services of Mr. Robert Crowe of LaGrange, Kentucky, prior to the

sale on September 21, 1933, and Mr. DeRidder, with the advice of his attorney, bid against Mr. Belknap on the property in question (R. 132, 133). The petition of Mr. Crowe, filed on behalf of Mr. DeRidder, prayed that Mr. DeRidder be restored the land in question upon the payment by him of $1,994.28, and "if this cannot be done," that Mr. DeRidder be paid the difference between $6,500.00, the amount paid by Mr. Belknap, and the amount of the original tax claim of the Government (R. 131).

It has been stipulated that Mr. DeRidder died in March, 1934 (R. 31). Thereafter on February 17, 1936, Messrs. Miller and Chevalier, a well-recognized and competent tax firm of Washington, D. C., wrote the Commissioner of Internal Revenue upon behalf of the estate of Mr. DeRidder, and upon behalf of Mrs. McAndrews, to determine the position of the Bureau of Internal Revenue as to the passage of legislation, to reimburse the estate in the approximate sum of $4,-500.00 (R. 139). This letter, among other things, states that the first sale was held improperly because not held on the actual land sold (R. 140).

The evidence is also uncontradicted that Mr Belknap had no notice of any claim of the defendants until very recently, that he purchased the land in question on September 21, 1933, believing that the United States had good title and that Mr. DeRidder, because of his bidding on the property, was of the same opinion, and that Mr. Belknap has spent thousands of dollars on the property without any notice of any claim being made by respondents (R. 76), and during a period of

time when the respondents knew all of the facts which they now know as shown above. It is uncontradicted that Mr. Belknap started making the biggest part of his expenditures about 1936 and 1937, which is after the letter dated February 17, 1936, was written by Miller and Chevalier (R. 76, 139).

If the foregoing facts do not make out a clear case of estoppel, we do not know where one could find such a case. Within the definition previously quoted from Pomeroy, which has been approved by the Court of Appeals of Kentucky, the conduct of Mr. DeRidder in bidding at the sale on September 21, 1933, and the conduct of Mrs. McAndrews in having attorneys write to the Commissioner of Internal Revenue, was voluntary, with full knowledge of the facts and the law. Such conduct was consistent only with an affirmance of the validity of the first sale. Mr. Belknap, in good faith, relied upon the conduct of Mr. DeRidder in bidding against him at the sale and was led to change his position for the worse by paying approximately $4,500.00 more for the property than he would have had to pay if Mr. DeRidder had not bid at the second sale that amount in excess of the tax claim (R. 131), and by making expenditures of thousands of dollars (R. 75).

There are many cases which have applied the principle of estoppel upon facts which were much weaker than those in the case at bar. In the case of *Neeley* v. *Guthrie,* 236 Ky. 81, 32 S. W. 2d 567, the plaintiff was present at a court sale when the defendant purchased the land in question, but remained silent as to his

(plaintiff's) claim. The Court at page 568 of the S. W. 2d Reporter in referring to the defendant, said:

> "Appellee having purchased the land under these circumstances, appellant [plaintiff] is estopped from now claiming it."

To the same effect are *Viall* v. *Pepples,* 274 Ky. 599, 119 S. W. 2d 860, and *Chestnut* v. *Allen,* 282 Ky. 703, 139 S. W. 2d 729. In the latter case the Court stated, at page 730 of the S. W. 2d Reporter:

> "Also, it is elementary that one who stands by silently and sees another purchase property from a third person without giving information that the property is his is estopped from asserting title against the purchaser."

The case at bar is much stronger, because Mr. DeRidder did not remain silent at the sale on September 21, 1933, but affirmatively bid against Mr. Belknap.

We wish to emphasize that estoppel will not only bar the respondents from quieting title in themselves but is effective to give Mr. Belknap a good, *legal title* even when, except for the principle of estoppel, the tax sale would be considered absolutely *void at law. Campbell* v. *McGrath,* 117 Okla. 126, 245 P. 634; *Proctor* v. *Nance,* 220 Mo. 104, 119 S. W. 409. In other words, even if it be held that the 1931 sale was void, the judgment of the Circuit Court of Appeals should be reversed on the ground that Mr. Belknap has good title on the basis of estoppel.

To support the proposition that the efforts of Mr. DeRidder to buy the property at the sale in 1933 did not give rise to estoppel, the only cases cited by the Circuit Court of Appeals (R. 177) are *Cavin* v. *Little,* 213 Ky. 482, 492, 281 S. W. 480, and *Warfield Natural Gas Company* v. *Ward,* 286 Ky. 73, 100, 149 S. W. 2d 705. In view of the language found in these cases at the pages indicated, we presume this statement was made because it was considered DeRidder could bid on the property to buy his peace without admitting title in someone else. However, the case of *Fitch* v. *Gentry* (Ky.), 92 S. W. 586, shows that DeRidder could buy his peace and not be estopped only if he was in possession of Tracts 2 and 3 at the time of the sale in 1933. Mr. Belknap testified at page 78 of the Record that Mr. DeRidder was not in possession at such time, and there is no evidence in the Record inconsistent with such evidence. Furthermore, to bring the case at bar within the principle laid down in the said two cases relied on by the Circuit Court of Appeals, Mr. DeRidder would have had to have *actually bought* the property and obtained a deed from the United States.

Therefore, it is submitted that *estoppel* is a sufficient ground *alone* to reverse the judgment of the Circuit Court of Appeals.

C. The Circuit Court of Appeals erred in failing to affirm the judgment of the District Court on the ground that the laches alone of respondents was sufficient to give the petitioner good title.

The Circuit Court of Appeals held that Respondents were guilty of laches, which barred any right to have title quieted in them. The Circuit Court of Appeals erred, however, in not going further and holding that their laches should result in title being quieted in petitioner.

Since the Circuit Court of Appeals held that the respondents were guilty of laches, this point will not be discussed in detail. We wish to simply point out that the doctrine of laches will cut off a *legal* as well as an equitable title.

In the case of *Dickinson* v. *Norman,* 165 Ark. 186, 263 S. W. 387, plaintiff brought suit to remove a cloud from his title. It was held that he was estopped by the laches of his grantor, who had waited six years and eight months after the death of her testator before she probated a will in which certain lands were devised to her, where, in the meantime, a person holding alleged forged deeds from the testator, had recorded them, and had sold such lands to others who paid valuable consideration therefor and had made valuable improvements thereon. The Court pointed out that laches is not merely delay, but delay that works a disadvantage to another. As to what may constitute such disadvantages the Court, at page 388 of the Southwestern Reporter, said:

> "Those disadvantages may come from the loss of evidence, change of title, intervention of equities and other causes; but when a court sees neglect on one side and injury therefrom on the other, it is a ground for denial of relief."

From the facts we have already outlined, we have such disadvantages in the case at bar. Then the Court states that the reason the persons who have a paper title only through forged deeds prevail, is not because they are bona-fide purchasers without notice who have cut off the legal title of the plaintiff, but the equities of those persons and the doctrine of laches "supervene *any right* appellant [plaintiff] now has." (Italics ours.)

Under this case even though it be assumed only for the sake of argument that in the case at bar the tax sale was void, the doctrine of laches will "supervene" *any right, legal* or otherwise, which the defendants might have except for that doctrine. Also see *Ulikowsky* v. *Casper,* 98 N. J. Eq. 70, 130 Atl. 454; *Grantham Realty Corporation* v. *Bowers,* —— Ind. ——, 22 N. W. 2d 832; and *Rothchild* v. *Memphis & C. R. Co.,* 113 F. 476.

Therefore, it is submitted that the doctrine of laches *alone* is sufficient to reverse the judgment of the Circuit Court of Appeals and to affirm the judgment of the District Court.

VI.

CONCLUSION.

The present case to which our petition is directed is a very unusual one on its facts. It undoubtedly will be a very rare instance where it will be found that a Federal tax sale was properly advertised and there is uncontradicted testimony in the record that no person present at the sale was interested in bidding on any or all of the property at any price. We *do have* such evidence in the present case with the result that it can not be denied that the taxpayer, Mr. DeRidder, would have been no better off if either or both tracts had been offered separately. If they had been, the evidence shows that it would then have been necessary to sell the property to the United States exactly as was done. To hold after many years have passed and the property has been sold to a bona-fide purchaser for value who has made substantial improvements, that the 1931 sale was void is to emphasize *form* in the face of the statute which provides that as to Federal tax sales *substantial* compliances with the law is all that is necessary.

To uphold the judgment of the Circuit Court of Appeals is to prejudice the rights of persons who have bought property in good faith from the United States and thereby to prejudice the United States itself in the collection of its revenues. To reverse the judgment of the Circuit Court of Appeals and affirm the judgment of the District Court does not take away any rights to which respondents are entitled. Such a prin-

ciple will not result in any injustice to taxpayers in any other situation.

Therefore, we submit that the judgment of the Circuit Court of Appeals should be reversed and the judgment of the District Court affirmed on each of the three grounds hereinbefore discussed, *namely*, that the 1931 tax sale was not invalid to the extent of affecting Mr. Belknap's title and that he is entitled to have the relief prayed for either because of estoppel or because of laches. Any *one* of the three grounds is sufficient to reverse the judgment of the Circuit Court of Appeals.

WHEREFORE, it is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a writ of certiorari and reversing the decision of the United States Circuit Court of Appeals for the Sixth Circuit.

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